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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/628,588

07/28/2003

Jeffrey K. Drogué

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7590

08/23/2007

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EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

08/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/628,588

Applicant(s)

DROGUE ET AL.

Examiner

Michael G. Bogart

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11 June 2007 has been entered.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19, 20, 24, 25 and 27-30 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ciavattoni *et al.* (US 3,665,682; hereinafter “Ciavattoni”).

Regarding claim 19, Ciavattoni teaches a vacuum system comprising:

a vacuum source (28, 30, 32);

a connector (10) in communication with the vacuum source (28, 30, 32) and comprising an inlet (64), an outlet (84), a separation chamber (26, 68) in communication with the inlet (64), an air pathway (72, 73, 74, 70, 78) in communication with the separation chamber (26, 68) and

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the outlet (84), and a fluid pathway (100) separate from the air pathway (72, 73, 74, 70, 78) and in communication with the separation chamber (26, 68) and the outlet (84);

an end effector (12, 14, 16) in communication with the inlet (64); and

a decontamination unit (70, 76) in cooperation with the outlet (84)(col. 2, line 69-col. 3, line 25)(see figures 1, 2 and 5, *infra*).

Regarding claim 20, the decontamination unit may be collapsed under sufficient externally applied force.

Regarding claim 24, Ciavattoni teaches that the vacuum source includes a centrifugal separator (68)(col. 2, lines 11-33; col. 3, line 11-col. 4, line 7).

Regarding claim 25, Ciavattoni teaches an inlet (30).

Regarding claim 27, Ciavattoni teaches a collection chamber in communication with the separation chamber (26).

Regarding claim 28, Ciavattoni teaches a pressure regulator (36) that effectively regulates the vacuum level that occurs downstream of venturis (28, 30, 32)(col. 2, line 69-col. 3, line 25).

Regarding claim 29, Ciavattoni teaches a baffle (66, 72) in cooperation with the inlet (64).

Regarding claim 30, Ciavattoni teaches a filter (76).

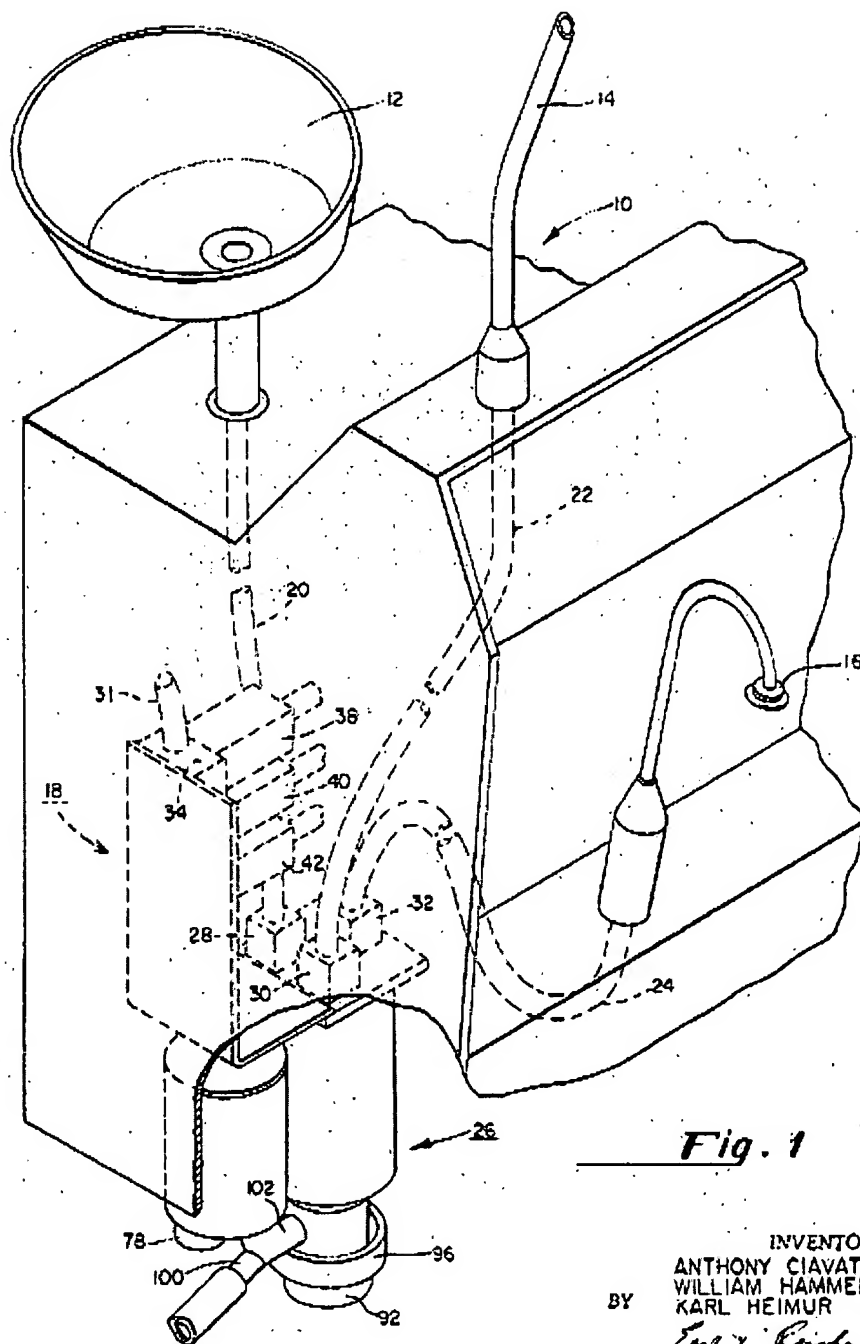
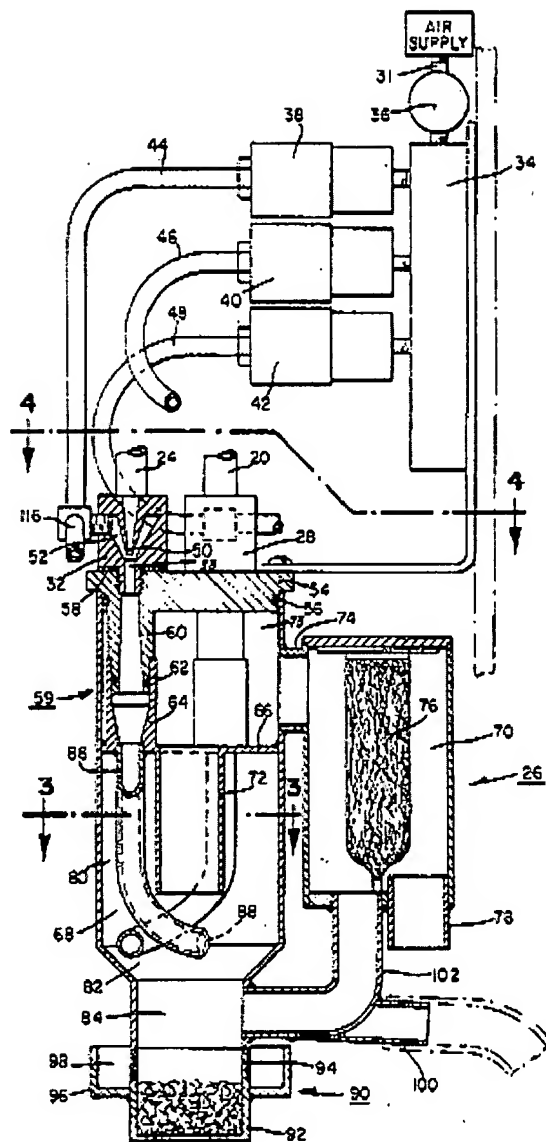


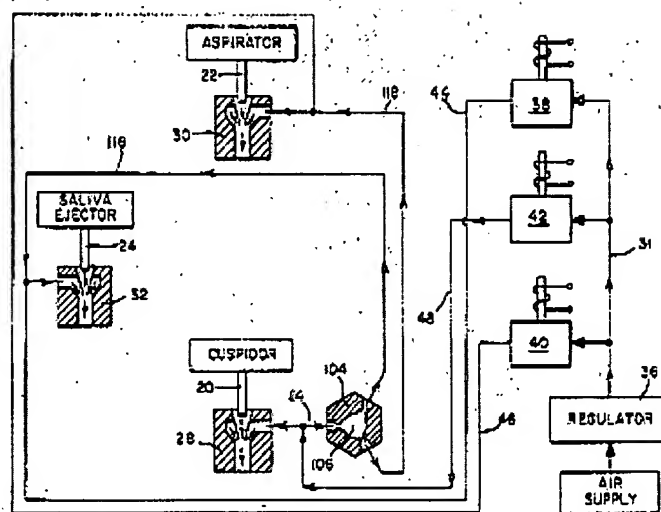
Fig. 1

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**Fig. 5**

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BY *Earl F. Reinhardt*
ATTORNEY.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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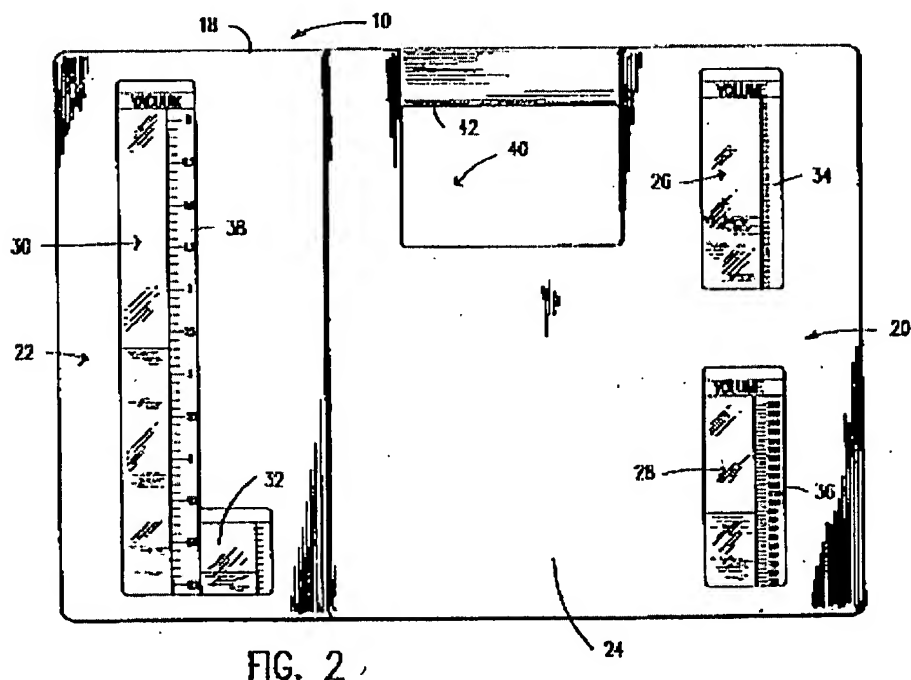
invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 21 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ciavattoni as applied to claims 19, 20, 24, 25 and 27-30 above, and further in view of Goosen (US 5,019,060).

Ciavattoni does not expressly teach a measuring device.

Regarding claim 26, Goosen teaches a flow volumetric flow indicator (26)(figure 2, *infra*).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the flow indicator of Goosen to the evacuation apparatus of Ciavattoni in order to provide a means of monitoring the flow rate of the system.



Regarding claim 21, Ciavattoni in view of Goosen do not expressly disclose a flow meter.

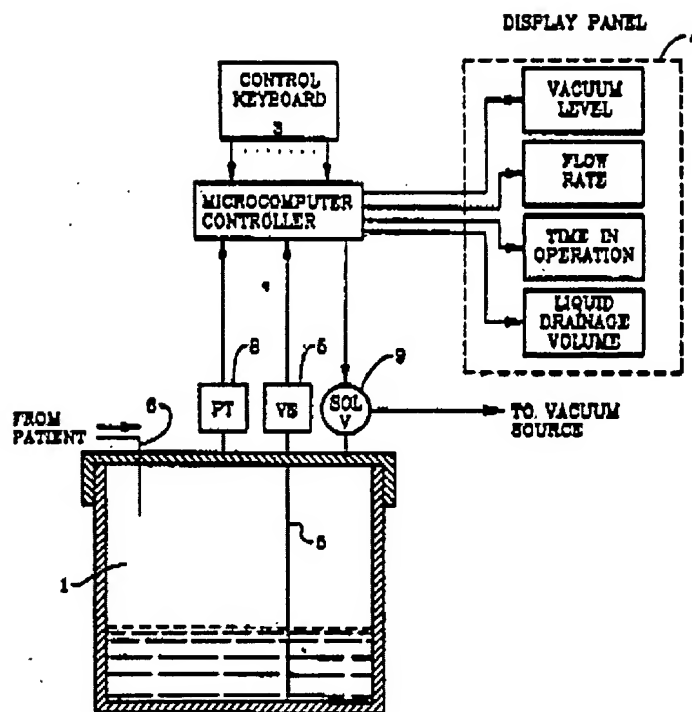
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Merely automating a prior art process is not sufficient to patentably distinguish a claimed invention if no unexpected result can be demonstrated. See *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.). MPEP § 2144.04. In the instant case, applicants have added electronic calculating means to a flow meter, which can automatically calculate flow rates, etc. This is simply an automation step over the manual calculations which may be performed by the combination of Ciavattoni and Goosen.

Claims 15 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ciavattoni and Goosen as applied to claim 21 above, and further in view of Walker (US 5,195,995 A).

Ciavattoni in view of Goosen do not expressly teach a key pad input device.

Walker teaches a keyboard (3) for controlling a medical suction apparatus (see figure 1, *infra*).



At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the keyboard of Walker to the evacuation apparatus of Ciavattoni in view of Goosen in order to provide a means of controlling the air pressure and vacuum applied to a patient.

Response to Arguments

Applicant's arguments filed 11 June 2007 have been fully considered but they are not persuasive.

Applicants assert that neither Ciavattoni or Goosen disclose a decontamination unit and that Ciavattoni's filtering chamber and means (70, 76) is not a decontamination unit. This argument is not persuasive because Ciavatttoni's filtering unit removes particulates from air passing therethrough prior to exiting the device. In this case, such particulates may be reasonably construed as contaminants as they may be biohazard wastes contaminants.

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Conclusion

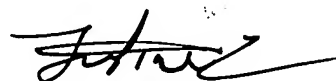
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
20 August 2007


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
8/20/07